

IN THE SENATE

SENATE BILL NO. 1089

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO BEER AND WINE LICENSES; AMENDING SECTION 23-942, IDAHO CODE, TO REVISE THE DEFINITIONS OF "LICENSEE" AND "PLACE"; AMENDING SECTION 23-1001, IDAHO CODE, TO REVISE THE DEFINITION OF "PREMISES" AND TO ADD A DEFINITION OF "MOBILE OR TEMPORARY FOOD COURT"; AMENDING SECTION 23-1010, IDAHO CODE, TO PROVIDE REFERENCE TO MOBILE OR TEMPORARY FOOD COURT AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 10, TITLE 23, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 23-1011C, IDAHO CODE, TO PROVIDE FOR A LICENSE TO SELL BEER AT A PLACE; AMENDING SECTION 23-1303, IDAHO CODE, TO ADD A DEFINITION OF "MOBILE OR TEMPORARY FOOD COURT," TO REVISE THE DEFINITION OF "WINE BY-THE-DRINK LICENSE" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 13, TITLE 23, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 23-1307B, IDAHO CODE, TO PROVIDE FOR A LICENSE TO SELL WINE BY-THE-DRINK AT A PLACE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 23-942, Idaho Code, be, and the same is hereby amended to read as follows:

23-942. DEFINITIONS. The following definitions shall apply in the interpretation of the enforcement of this act:

(a) "Licensee" shall mean any person licensed to sell liquor by the drink at retail pursuant to the provisions of chapter 9, title 23, Idaho Code, and any person licensed to sell beer for consumption on the premises, which term shall include a mobile or temporary food court where sold pursuant to the provisions of chapter 10, title 23, Idaho Code, or county or municipal ordinance.

(b) "Place," as used in this act, means any room of any premises licensed for the sale of liquor by the drink at retail wherein there is a bar and liquor, bar supplies and equipment are kept and where beverages containing alcoholic liquor are prepared or mixed and served for consumption therein, and any room of any premises licensed for the sale of beer for consumption on the premises wherein there is a bar and beer, bar supplies and equipment are kept and where beer is drawn or poured and served for consumption therein, which term shall include a mobile or temporary food court as defined in section 23-1001, Idaho Code.

(c) "Restaurant," as used in this act, means any restaurant, cafe, hotel dining room, coffee shop, cafeteria, railroad dining car or other eating establishment having kitchen and cooking facilities for the preparation of food and where hot meals are regularly served to the public.

SECTION 2. That Section 23-1001, Idaho Code, be, and the same is hereby amended to read as follows:

23-1001. DEFINITIONS. As used in this chapter:

(a) The word "beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and/or other ingredients in drinkable water.

(b) The word "brewer" means a person licensed to manufacture beer.

(c) "Certificate of approval" means a license issued to a person whose business is located outside of the state of Idaho, who sells beer to wholesalers or brewers located within the state of Idaho.

(d) The term "dealer" means a person licensed to import beer into this state for sale to a wholesaler.

(e) The word "director" means the director of the Idaho state police.

(f) The words "live performance" mean a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(g) The word "person" includes any individual, firm, copartnership, association, corporation or any group or combination acting as a unit, and the plural as well as the singular number unless the intent to give a more limited meaning is disclosed by the context.

(h) The word "premises" means the building, mobile or temporary food court and contiguous property owned, or leased or used under government permit by a licensee as part of the business establishment in the business of sale of beer at retail, which property is improved to include decks, docks, boardwalks, lawns, gardens, golf courses, ski resorts, courtyards, patios, poolside areas or similar improved appurtenances in which the sale of beer at retail is authorized under the provisions of law.

(i) The word "retailer" means a person licensed to sell beer to consumers at premises described in the license.

(j) The word "theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(k) The word "wholesaler" means any person licensed to sell beer to retailers, wholesalers, permittees or consumers and distribute beer from warehouse premises described in the license.

(l) "Mobile or temporary food court" means a facility that has one (1) or more vendors serving food including, but not limited to, hamburgers, hot dogs, sandwiches, salads and other snack foods that shall contain a place in close proximity to food vendors, which is an area where bar supplies and equipment are kept and where beer and wine are poured or served for consumption and contains a partition that is a structure separating the place from the remainder of the premises. Access to the structure shall be controlled to prevent minors from entering the place and shall be designed to prevent alcoholic beverages from being passed over, under or through the structure. The partition design and use must be approved by the director.

(m) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and acceptable meanings.

SECTION 3. That Section 23-1010, Idaho Code, be, and the same is hereby amended to read as follows:

23-1010. LICENSE TO SELL BEER AT RETAIL -- APPLICATION PROCEDURE AND FORM -- SHOWING OF ELIGIBILITY FOR LICENSE AND DISQUALIFICATIONS. (1) Every

1 person who shall apply for a state license to sell beer at retail shall tender
 2 the license fee to, and file written application for license with, the di-
 3 rector. The application shall be on a form prescribed by the director which
 4 shall require such information concerning the applicant, the premises for
 5 which license is sought and the business to be conducted thereon by the ap-
 6 plicant as the director may deem necessary or advisable, and which shall en-
 7 able the director to determine that the applicant is eligible and has none of
 8 the disqualifications for license, as provided for in this section. If the
 9 applicant is applying for a license solely for a theater that is presenting
 10 live performances as those terms are defined in section 23-1001, Idaho Code,
 11 the application shall so state. Such information shall include the follow-
 12 ing:

13 (a) The name and place of residence of the applicant and length of his
 14 residence within the state of Idaho, and if the applicant is a partner-
 15 ship, the names, places of residence and lengths of residence within the
 16 state of Idaho of each partner, and, if the applicant is a corporation or
 17 association, the date and place of incorporation or organization, the
 18 location of its principal place of business in Idaho and the names and
 19 places of residence of its officers, directors or members of its govern-
 20 ing board, and of the person who manages or will manage the business of
 21 selling beer at retail;

22 (b) The particular place for which the license is desired, designating
 23 the same by a street and number, if practicable, or by such other apt de-
 24 scription as definitely locates such place, and the name of the owner of
 25 the premises, which shall include a mobile or temporary food court for
 26 which the license is sought;

27 (2) The application shall affirmatively show:

28 (a) That the applicant is the bona fide owner of the business which will
 29 be engaged in the sale of beer at retail and with respect to which li-
 30 cense is sought;

31 (b) That the condition of the place, ~~or~~ building or mobile or tempo-
 32 rary food court wherein it is proposed to sell beer at retail conforms
 33 to all laws and rules of the state of Idaho and to the ordinances of the
 34 county and municipality applicable thereto relating to public health
 35 and safety and to the zoning ordinances of the municipality applicable
 36 thereto;

37 (c) That there is no stamp or permit outstanding and in force which
 38 has been issued to any person by the United States government for the
 39 premises for which license to sell beer at retail is sought which stamp
 40 or permit denotes payment of any special tax imposed by the United
 41 States government on a retail dealer in liquor or wines, unless said
 42 premises are premises for which a retail license for sale of liquor
 43 by-the-drink, issued under the provisions of chapter 9, title 23, Idaho
 44 Code, is in force and effect;

45 (d) That the individual applicant, or each partner of a partnership
 46 applicant, or a corporation applicant or an association applicant is
 47 qualified to do business within the state of Idaho;

48 (e) That the applicant, if an individual, is not less than nineteen (19)
 49 years of age;

1 (f) That within three (3) years immediately preceding the date of
2 filing the application the applicant has not been convicted of the vio-
3 lation of any law of the state of Idaho, any other state, or of the United
4 States, regulating, governing or prohibiting the sale, manufacture,
5 transportation or possession of alcoholic beverages or intoxicating
6 liquors, or, within said time, suffered the forfeiture of a bond for
7 failure to appear in answer to charges of any such violation;

8 (g) That within five (5) years immediately preceding the date of filing
9 the application the applicant has not been convicted of any felony or
10 paid any fine or completed any sentence of confinement therefor within
11 said time;

12 (h) That within three (3) years next preceding the date of filing said
13 application the applicant has not had any license provided for herein,
14 or any license or permit issued to the applicant pursuant to the law
15 of this state, or any other state, or of the United States, to sell,
16 manufacture, transport or possess alcoholic beverages or intoxicating
17 liquors, revoked.

18 (3) To determine qualification for a license, the director shall also
19 cause an investigation which shall include a fingerprint-based criminal
20 history check of the Idaho central criminal history database and the federal
21 bureau of investigation criminal history database. Each person listed as an
22 applicant on an initial application shall submit a full set of fingerprints
23 and the fee to cover the cost of the criminal history background check for
24 such person with the application.

25 (4) The affirmative showing required with respect to an applicant under
26 paragraphs (e), (f), (g) and (h) of subsection (2) of this section shall also
27 be required to be made with respect to each partner of a partnership appli-
28 cant and to each incumbent officer, director or member of the governing board
29 of a corporation or association applicant.

30 (5) The application must be subscribed and sworn to by the individual
31 applicant, or by a partner of a partnership applicant, or by an officer or
32 manager of a corporation or association applicant, before a notary public or
33 other person authorized by law to administer oaths.

34 (6) If an applicant shall be unable to make any affirmative showing re-
35 quired in this section or if an application shall contain a false material
36 statement, knowingly made, the same shall constitute a disqualification for
37 license and license shall be refused. If license is received on any appli-
38 cation containing a false material statement, knowingly made, such license
39 shall be revoked. If at any time during the period for which license is is-
40 sued a licensee becomes unable to make the affirmative showings required by
41 this section, license shall be revoked, or, if disqualification can be re-
42 moved, the license shall be suspended until the same shall be removed. The
43 procedure to be followed upon refusal, revocation or suspension of license
44 as herein provided for shall be in accordance with the procedure set forth in
45 this act.

46 (7) All licenses shall expire at 1:00 o'clock a.m. on the first day of
47 the renewal month which shall be determined by the director by administra-
48 tive rule and shall be subject to annual renewal upon proper application.
49 The director will determine the renewal month by county based on the num-
50 ber of current licenses within each county, distributing renewals through-

1 out the licensing year. The director may adjust the renewal month to accom-
 2 modate population increases. Each licensee will be issued a temporary li-
 3 cense to operate until their renewal month has been determined. Thereafter,
 4 renewals will occur annually on their renewal month. Renewal applications
 5 for licenses accompanied by the required fee must be filed with the direc-
 6 tor on or before the first day of the designated renewal month. Any licensee
 7 holding a valid license who fails to file an application for renewal of the
 8 current license on or before the first day of the designated renewal month
 9 shall have a grace period of an additional thirty-one (31) days in which to
 10 file an application for renewal of the license. The licensee shall not be
 11 permitted to sell beer at retail during the thirty-one (31) day extended time
 12 period unless and until the license is renewed.

13 SECTION 4. That Chapter 10, Title 23, Idaho Code, be, and the same is
 14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 15 ignated as Section 23-1011C, Idaho Code, and to read as follows:

16 23-1011C. BEER LICENSE AT A MOBILE OR TEMPORARY FOOD COURT. A license
 17 to sell beer at a place within a mobile or temporary food court as defined
 18 in section 23-1001, Idaho Code, shall be granted as long as the owner of the
 19 place pays all the required fees provided by law for the license, passes the
 20 necessary qualifications for the issuance of the license and adheres to the
 21 provision of this title regarding the sale, transporting and storing of al-
 22 coholic beverages. A license issued may be revoked or suspended as provided
 23 in this chapter.

24 SECTION 5. That Section 23-1303, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 23-1303. DEFINITIONS. (1) The following terms as used in this chapter
 27 are hereby defined as follows:

28 (a) "Dessert wine" means only those beverages that are designated
 29 or labeled, pursuant to the federal alcohol administration act, as
 30 "sherry," "~~m~~Madeira" or "port," which contain more than sixteen percent
 31 (16%) alcohol by volume, but do not exceed twenty-one percent (21%)
 32 alcohol by volume. Dessert wine as defined herein shall not be deemed
 33 to be a spirit-based beverage for the purposes of paragraph (g) of this
 34 subsection.

35 (b) "Director" means the director of the Idaho state police.

36 (c) "Distributor" means a person to whom a wine distributor's license
 37 has been issued.

38 (d) "Domestic produced product" means wine at least seventy-five per-
 39 cent (75%) of which by volume is derived from fruit or agricultural
 40 products grown in Idaho.

41 (e) "Importer" means a person to whom a wine importer's license has been
 42 issued.

43 (f) "Live performance" means a performance occurring in a theater and
 44 not otherwise in violation of any provision of Idaho law.

45 (g) "Low proof spirit beverages" means any alcoholic beverage contain-
 46 ing not more than fourteen percent (14%) alcohol by volume obtained by
 47 distillation mixed with drinkable water, fruit juices and/or other in-

1 gredients in solution. These products shall be considered and taxed as
 2 wine. Spirit-based beverages exceeding fourteen percent (14%) alcohol
 3 by volume shall be considered as liquor and sold only through the divi-
 4 sion system.

5 (h) "Person" includes an individual, firm, copartnership, associa-
 6 tion, corporation, or any group or combination acting as a unit, and
 7 includes the plural as well as the singular unless the intent to give a
 8 more limited meaning is disclosed by the context in which it is used.

9 (i) "Retailer" means a person to whom a retail wine license has been is-
 10 sued.

11 (j) "Retail wine license" means a license issued by the director, au-
 12 thorizing a person to sell table wine and/or dessert wine at retail for
 13 consumption off the licensed premises.

14 (k) "Table wine" shall mean any alcoholic beverage containing not more
 15 than sixteen percent (16%) alcohol by volume obtained by the fermenta-
 16 tion of the natural sugar content of fruits or other agricultural prod-
 17 ucts containing sugar whether or not other ingredients are added.

18 (l) "Theater" means a room, place or outside structure for performances
 19 or readings of dramatic literature, plays or dramatic representations
 20 of an art form not in violation of any provision of Idaho law.

21 (m) "Vintner" means a person who manufactures, bottles, or sells ta-
 22 ble wine or dessert wine to importers for resale within this state other
 23 than a licensed "winery" as herein defined.

24 (n) "Wine" includes table wine and dessert wine, unless the context re-
 25 quires otherwise.

26 (o) "Wine by-the-drink license" means a license to sell table wine or
 27 dessert wine by the individual glass or opened bottle at retail, for
 28 consumption either on the premises ~~only~~ or at a mobile or temporary food
 29 court.

30 (p) "Wine distributor's license" means a license issued by the director
 31 to a person authorizing such person to distribute table wine or dessert
 32 wine to retailers within the state of Idaho.

33 (q) "Wine importer's license" means a license issued by the director
 34 to a person authorizing such person to import table wine or dessert wine
 35 into the state of Idaho and to sell and distribute such wines to a dis-
 36 tributor.

37 (r) "Winery" means a place, premises or establishment within the state
 38 of Idaho for the manufacture or bottling of table wine or dessert wine
 39 for sale. Two (2) or more wineries may use the same premises and the same
 40 equipment to manufacture their respective wines, to the extent permit-
 41 ted by federal law.

42 (s) "Winery license" means a license issued by the director authorizing
 43 a person to maintain a winery.

44 (t) "Mobile or temporary food court" is a facility that has one (1) or
 45 more vendors serving food including, but not limited to, hamburgers,
 46 hot dogs, sandwiches, salads and other snack foods that shall contain a
 47 place in close proximity to food vendors, which is an area where bar sup-
 48 plies and equipment are kept and where beer and wine are poured or served
 49 for consumption and contains a partition that is a structure separating
 50 the place from the remainder of the premises. Access to the structure

1 shall be controlled to prevent minors from entering the place and shall
2 be designed to prevent alcoholic beverages from being passed over, un-
3 der or through the structure. The partition design and use must be ap-
4 proved by the director.

5 (2) All other words and phrases used in this chapter, the definitions of
6 which are not herein given, shall be given their ordinary and commonly under-
7 stood and accepted meanings.

8 SECTION 6. That Chapter 13, Title 23, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 23-1307B, Idaho Code, and to read as follows:

11 23-1307B. WINE BY-THE-DRINK LICENSE AT MOBILE OR TEMPORARY FOOD
12 COURT. A license to sell wine by-the-drink at a place within a mobile or tem-
13 porary food court as defined in section 23-1303, Idaho Code, shall be granted
14 as long as the owner of the place pays all the required fees provided by law
15 for the license, passes the necessary qualifications for the issuance of the
16 license and adheres to the provision of this title regarding the sale, trans-
17 porting and storing of alcoholic beverages. A license issued may be revoked
18 or suspended as provided in this chapter.

19 SECTION 7. An emergency existing therefor, which emergency is hereby
20 declared to exist, this act shall be in full force and effect on and after its
21 passage and approval.